

KRONENBERGER BURGOYNE, LLP
Karl S. Kronenberger (Bar No. 226112)
Henry M. Burgoyne, III (Bar No. 203748)
150 Post Street, Suite 520
San Francisco, CA 94108
Telephone: (415) 955-1155
Facsimile: (415) 955-1158

Attorneys for Plaintiff CRS Recovery

FILED

2006 NOV 15 P 3:14

RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.D.

ADR

E-FILING

af
Sm #9
FreePd
SI

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

C06 07093 CW

Case No.

CRS Recovery, Inc., a Virginia
Corporation, and **DALE MAYBERRY**

Plaintiffs,

vs.

JOHN LAXTON, aka
johnlaxton@gmail.com, **NORTH BAY
REAL ESTATE, INC.**, **TIGER-CDM**,
BARNALI KALITA, aka
barnali.kalita@gmail.com, **LI QIANG**, aka
JONATHAN LEE aka
nameowner@yahoo.com, **RL.COM**,
MAT.NET, **BULK REGISTER**, **WILD WEST
DOMAINS**, dba **DOMAINCITY.COM**, and
DOES 1 - 20,

Defendants.

**COMPLAINT FOR CONSPIRACY TO
CONVERT AND CONVERSION,
INTENTIONAL INTERFERENCE WITH
CONTRACT; UNFAIR BUSINESS
PRACTICES (REQUEST FOR
CONSTRUCTIVE TRUST), AND
DECLARATORY RELIEF;
ALTERNATIVELY, ACTION *IN REM*
AGAINST INTERNET DOMAIN
NAMES**

BY FAX

COMPLAINT

KRONENBERGER BURGOYNE, LLP
150 Post Street, Suite 520
San Francisco, CA 94108
www.KronenbergerLaw.com

THE PARTIES

8. Does 6 – 20, being the alter egos, agents, principals, and co-conspirators of the named defendants have used, trafficked in, and otherwise culpably participated in the scheme to defraud, convert and extract unlawful profits from the acts alleged herein.

1 Their names not being specifically known, they are alleged fictitiously with intent to later
2 amend to allege their true names, when they become known to plaintiffs.

3 **FACTS**

4 9. Internet domain names are personal property. Two-letter Internet domain
5 names are relatively rare, simply from a numerical standpoint, and accordingly enjoy
6 higher valuations in the active secondary market for Internet domain names. There are
7 only six-hundred and seventy-six (676) two-letter dot-com Internet domain names,
8 whereas there are seventeen-thousand, five-hundred and seventy-six (17,576) three-
9 letter dot-coms. Since the total number of domains is functionally infinite, and two-letter
10 domains are extremely easy to remember, they partake of inherently high valuations,¹
11 which make them ideal targets for Internet domain thieves.

12 10. Plaintiffs seek to recover two stolen Internet domain names: RL.Com and
13 MAT.Net. The theft of both domain names was accomplished by the same party or
14 parties assuming various identities in a single course of unlawful conduct engaged in for
15 the purpose of gaining unlawful control over the domains RL.Com and MAT.Net. In an
16 unusual twist on the domain-theft scenario, the domain thieves first stole MAT.Net, and
17 then used control of that domain to steal RL.Com.

18 11. RL.Com was originally registered on July 23, 1995 by Dale Mayberry
19 ("Mayberry") through Network Solutions, Inc. ("NSI").² NSI secured Mayberry's control of
20 the URL through his use of dale@MAT.Net, an email address hosted through MAT.Net.
21 The technical functioning of email gives the owner of an Internet domain name like
22 MAT.Net control over the operation of every email address hosted through the domain.
23 Mayberry was the registrant of MAT.Net prior to the events alleged below.

24 12. Prior to December 19, 2003, the registration for MAT.Net had been held by
25 Mayberry in the name of Micro Access Technologies, Inc. in a domain name registration

26 ¹ "Two-character domain names are exceptionally valuable." How is the value of domain
27 names affected by number of keywords and length? by E. Pasqualetti and A. Van
28 Couvering. <<http://www.domainsbot.com/labs/stats-keywords.aspx>>

² NSI is a wholly-owned subsidiary of VeriSign Corporation.

KRONENBERGER BURGOYNE, LLP
150 Post Street, Suite 520
San Francisco, CA 94108
www.kronenberg-law.com

1 account at NSI. On or about December 19, 2003, Mayberry's efforts to renew the
2 registration of MAT.Net during the standard renewal period were unaccountably denied,
3 and registration of MAT.Net was shifted against his will to Beijing Sinonets Network &
4 Telcom Co., Ltd., an entity listing a street address in "Beijing, Beijing" on the domain
5 registration database. The use of addresses in Asian nations is a favorite ruse of
6 domain thieves located in the United States, who thus conceal their identities, deflect
7 scrutiny, and deter legal action against their persons, with the intent to frustrate recovery
8 of stolen domains. Once in control of MAT.Net, the domain thieves transferred it to the
9 registrar BIZCN.COM, registering it in the name of Domain City, with a contact email of
10 nameowner@yahoo.com. The email address of nameowner@yahoo.com has been
11 utilized previously in the theft of other domain names.

12 13. On or about January 16, 2004, Mayberry discovered that domain thieves
13 had used their control over MAT.Net and their control over the subordinate email
14 address dale@MAT.Net, to transfer the registration of RL.Com, from Mayberry's NSI
15 account to BIZCN.COM, Inc. This transfer was accomplished through fraud and in bad
16 faith, without Mayberry's knowledge or permission, using the hijacked email address
17 dale@MAT.Net to falsely impersonate Mayberry's authority to transfer the domain from
18 one registrar to another. To avoid raising suspicion, the domain thieves nominally
19 continued the registration in the name of Dale Mayberry, since a single-registrant's shift
20 of a domain from one registrar to another raises no "red flags" and is more easily
21 accomplished. However, once RL.Com had been transferred to BIZCN.COM, Mayberry
22 had no control of RL.Com, because the defendants changed the email address
23 associated with the registrant to mayberrydale@yahoo.com, an email address that was
24 not created or controlled by Dale Mayberry, but rather by the thieves who had stolen
25 RL.Com.

26 14. A series of changes in registration then followed, all without Mayberry's
27 authority or knowledge. On or about February 3, 2004, RL.Com was transferred to a
28 new Registrar called Directi.Com, and the registrant was changed to "Tiger – CDM,"

1 listing a street address in Bangalore, Karnataka (India). On or about July 10, 2004,
 2 RL.Com was transferred to "Enable Communications," also listing a street address in
 3 Bangalore. On or about November 7, 2004, RL.Com was transferred to a new
 4 registrant, "Barnali Kalita," also listing a street address in Bangalore.

5 15. In May, 2005, Barnali Kalita transferred RL.Com to Laxton. Mayberry has
 6 made a formal written demand that Laxton return the registration of RL.Com, but Laxton
 7 has refused to comply with the demand.

8 16. On a date presently unknown, registration of Mat.Net was transferred from
 9 BIZCN.Com to DomainCity.Com, an unregistered fictitious business name of Wild West
 10 Domains, Inc., an Arizona corporation.

11 17. In July, 2005, Mayberry transferred all of his right, title and interest in
 12 RL.Com to CRS for valuable consideration. In the same transaction, Mayberry
 13 transferred to CRS the right to recover MAT.Net, upon the understanding that, when
 14 CRS recovered MAT.Net, CRS would transfer the registration back to Mayberry.

15 **SUBJECT MATTER JURISDICTION**

16 18. This court has jurisdiction over this *in personam* action for injunctive relief
 17 to compel transfer of the domain name RL.COM pursuant to the Anticybersquatting
 18 Consumer Protection Act (ACPA), 15 U.S.C. §1125(d). The dispute arises from John
 19 Laxton's theft of and trafficking in the Internet Universal Resource Locator RL.COM (the
 20 "URL") in violation of the rights of the sole true and valid registrant of the URL, which
 21 rights are asserted here by CRS Recovery Services' (CRS) by assignment. This court
 22 has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. §§1121 and
 23 1125(d)(2) and 28 U.S.C. §1331 and 1338.

24 19. Alternatively, to the extent plaintiff is unable to secure personal jurisdiction
 25 over any necessary defendant, this court has jurisdiction *in rem* over the RL.COM
 26 domain name pursuant to 15 U.S.C. §1125(d)(2)(A), because name defendant's use of
 27 the domain name violates plaintiff's rights, and plaintiff is unable to obtain *in personam*
 28 jurisdiction over said defendant. VeriSign, Inc., the registry for the RL.COM domain

1 name is located in this judicial district. This action is therefore properly asserted *in rem*
 2 in this judicial district in accordance with 15 U.S.C. §1125(d)(2)(A).

3 VENUE

4 20. Venue is proper in this district under 15 U.S.C. §1125(d)(2)(C)(i) and 28
 5 U.S.C. § 1391(b)(2) because Verisign, Inc. ("Verisign"), the registry for all domain names
 6 ending in ".com," ".net" and ".org,"³ is domiciled in Mountain View, California.

7 21. Consequently, the situs of the RL.COM domain name is properly deemed
 8 to be in this judicial district pursuant to 15 U.S.C. § 1125(d)(2).

9 INTRADISTRICT ASSIGNMENT

10 22. For the purposes of Local Rule 3-2(c), this action arises in San Jose,
 11 where a substantial part of the events or omissions which give rise to the claims alleged
 12 herein occurred and in which a substantial part of the property that is the subject of this
 13 action is located.

14 FIRST CLAIM FOR RELIEF

15 Conversion And Conspiracy To Convert Internet Domain Names

16 (All Defendants)

17 23. The defendants, individually and in concert, conspired to convert and
 18 converted RL.Com and MAT.Net from the use and possession of Mayberry, the rightful
 19 owner, to their own use and possession, by a series of criminal acts constituting a single
 20 course of unlawful conduct, as follows:

- 21 a. Intending to defraud, they subverted the NSI renewal process,
- 22 frustrated Mayberry's efforts to renew the registration of MAT.Net, and
- 23 took the registration for themselves, thus gaining control over MAT.Net
- 24 with the intent to use it as an instrumentality for domain theft.

25
 26 ³ There are many domain name registrars like NSI, that are empowered to register
 27 domains. However, there is only one registry, and Verisign is that registry for domain
 28 names in the original .com, .net and .org "top level domains." Thus, Verisign has final
 control over the disposition of all Internet domains that end in .com, net, or .org,
 regardless of what registrar holds the registration.

KRONENBERGER BURGOWNE, LLP
 150 Post Street, Suite 520
 San Francisco, CA 94108
 www.KronenbergLaw.com

- b. Intending to defraud, the defendants unlawfully used their control over MAT.Net to forge email communications representing to be from dale@MAT.Net, thus publishing a forgery by phone in violation of Cal. Penal Code § 474.
- c. The defendants utilized dale@MAT.Net to falsely personate Mayberry, and in such assumed character, directed the transfer of RL.Com to BIZCN.COM, thus committing the crime of False Personation, a violation of Cal. Penal Code § 530.
- d. The defendants used the email address mayberrydale@yahoo.com to fraudulently alter the registration records in the WHOIS database⁴ so that it falsely recorded TIGER-CDM as the registrant of RL.Com, thus violating Cal. Penal Code § 470(c), that makes it criminal to "falsify any record of any ... instrument, the record of which is by law evidence."
- e. The defendants committed subsequent transfers of RL.Com without lawful authority, baldly usurping the true owner's rights, thus engaging in the bad faith trafficking in domain names made unlawful by the Anti-Cybersquatting Protection Act.

24. Each of the defendants who participated in the theft of MAT.Net and RL.Com, and the subsequent transfers lacked any lawful title to the two Internet domains, and thus their efforts to transfer registrations thereof were void, invalid ab initio, and subject to reversal by judicial order

25. Laxton has operated RL.Com profitably, and is currently steering Internet visitors to the RL.Com website to various advertisers. Laxton's profits are the fruits of unlawful conduct, subject to discovery and disgorgement.

26. Mayberry suffered damages in excess of this Court's jurisdictional minimum due to lost opportunities to exploit RL.Com and MAT.Com commercially.

⁴ The WHOIS database records the registration of all Internet domains, providing legal evidence of ownership.

34. CRS stands in Mayberry's shoes pursuant to a written assignment to recover possession of RL.Com and MAT.Com, and to recover pecuniary damages suffered by Mayberry.

THIRD CLAIM FOR RELIEF

Unfair Competition in Violation of Cal. Business & Professions Code § 17200

Request For Constructive Trust

(All Defendants)

35. Plaintiffs reallege and incorporate each and every allegation contained herein as if fully set forth hereat.

36. Plaintiffs bring this action under Cal. Bus. & Prof. Code §§ 17203 and 17204 to end the false advertising and unfair competitive practices of the defendants.

37. The defendants' actions above-alleged, to wit, the theft by means of forgery and subterfuge of the RL.Com and MAT.Net domains, and the business goodwill and revenue flowing therefrom, are in violation of the law and policy of the State of California, and are inimical to the rights and interests of the general public. Unless enjoined and restrained by an order of this Court, defendants, who are engaged in a continuing course of conduct, will continue to engage in the unlawful action and practices and courses of conduct set out below.

38. As above alleged, the defendants committed a series of criminal acts, constituting violations of California Penal Code ("CPC") § 470(b)(Forgery), CPC § 474 (Forgery by telephone or telegraph), CPC § 530 (False personation), and CPC § 470(c)(Falsification of official record). These unethical, criminal and immoral acts were committed in order to effect the theft of personal property of plaintiffs, to wit, the domains RL.Com and MAT.Net.

39. Defendants have engaged in actions violative of the laws, policies, business norms and ethics of the State of California by committing the following unlawful acts: (1) Misrepresenting their authority to dispose of the property of another; (2) Aiding in the sale and disposition of criminally-acquired assets, (3) Aiding, abetting and profiting from the commission of felonious acts.

40. Defendants have acquired wrongfully gained assets, which they refuse to release despite demand being made therefor. Defendants have been unjustly enriched

1 by their acts of unfair competition and false advertising. Assets held by the defendants,
 2 including the RL.Com and MAT.Net domains and funds generated by use of said assets,
 3 are traceable to the wrongful conduct of the defendants, and thus should be subjected to
 4 a constructive trust.

5 41. The domain MAT.Net is currently being offered for sale for \$8,140; which
 6 sale should be prevented by the imposition of constructive trust on any transfer of the
 7 domain. Likewise, the transfer of RL.Com should be prevented by imposition of a
 8 constructive trust to prevent frustration of the Court's authority over the property subject
 9 to recovery herein.

10 42. The acts of defendants, if not enjoined, will be continued and repeated,
 11 further harming plaintiffs and the public at large.

12 43. Plaintiff lack any remedy at law for the acts of defendants.

13 **FOURTH CLAIM FOR RELIEF**

14 **Declaratory Relief Under 28 U.S.C. § 2201**

15 **(Against All Defendants)**

16 44. Plaintiff realleges and incorporates each and every allegation contained
 17 herein as if fully set forth hereat.

18 45. An actual controversy exists between the Plaintiff and defendants, in that:

19 a. Plaintiff claims the following as its sole and exclusive rights:

- 20 i. The right to control the identity of the Registrant, Administrative
 21 Contact and Technical Contact for the RL.COM and MAT.Net
 22 domains in the worldwide Whois database,
- 23 ii. The right to reverse the effect of fraudulent transfers effected by
 24 identity theft and the use of forged documents of transfer,
- 25 iii. The right to obtain return of property wrongfully held, to wit, the
 26 RL.Com and MAT.Net domains, and

iv. The right to recover all funds wrongfully obtained by the defendants by the usurpation of plaintiffs' rights alleged as above in subparagraphs "i – iii."

46. Defendants deny that plaintiffs have such rights.

47. Wherefore, a declaration of the rights of the respective parties is merited.

ALTERNATIVE ALLEGATIONS

48. In the alternative to the above allegations made *in personam* against the name defendants, Plaintiff pleads this claim *in rem* against RL.Com and MAT.Net. The *in rem* claim arises under the Anticybersquatting Consumer Protection Act, 15 U.S.C. §1125(d) (ACPA) and the statutory and common laws of the State of California for the replevin of personal property.

FIFTH CLAIM FOR RELIEF

Cybersquatting In Violation of 15 U.S.C. § 1125(d)

In Rem Against the RL.Com and MAT.Net Domain Names

49. Plaintiffs reallege and incorporate each and every allegation contained herein as if fully set forth hereat.

50. This claim for relief is alleged jointly and in the alternative with the first claim for relief.

51. Plaintiffs allege inability to obtain personal jurisdiction over all or some of the name defendants due to circumstances arising from the deceptive activities of said defendants.

52. Plaintiffs therefore invoke the provisions of 15 U.S.C. § 1125(d)(2), naming the RL.COM and MAT.Net domains as *in rem* defendants, preserving all *in personam* claims pursuant to 15 U.S.C. § 1125(d)(3).

53. The registration records of the RL.Com and MAT.Net domains have been subjected to fraudulent manipulation, and are subject to correction by order of this Court.

54. RL.Com is currently registered at Bulk Register, which is domiciled in the State of Washington. MAT.Net is currently registered at DomainCity.com, an

1 unregistered fictitious business name of Wild West Domains, Inc. which is incorporated
 2 and domiciled in Arizona. Plaintiffs name defendants Bulk Register and SEDO in this
 3 claim for the purpose of establishing control over RL.Com and MAT.Net as prescribed by
 4 15 U.S.C. § 1125(d)(2)(D).

5 **NOTICE TO CURRENT REGISTRAR OF THE URL**

6 55. Pursuant to ACPA § 1125(d)(2)(A)(ii)(II)(aa), notice of the filing of this
 7 complaint and the application for injunctive relief is being sent to BulkRegister, LLC at
 8 the postal and email address or BulkRegister, LLC, 10 East Baltimore St., 10th Floor,
 9 Baltimore, MD 21202 (email: udrp@bulkregister.com) with respect to the disposition of
 10 RL.Com. Notice is being sent to Wild West Domains, Inc., 14455 North Hayden Road
 11 #219, Scottsdale, AZ 85260, with respect to the disposition of MAT.Net. Notice is being
 12 sent to Verisign at 487 East Middlefield Road, Mountain View, California 94043. CRS is
 13 providing such notice contemporaneously with the filing of this complaint. CRS will
 14 promptly publish notice of this action as the court may direct after filing of this Complaint.
 15 Pursuant to 15 U.S.C. § 1125(d)(2)(A)(ii)(II)(bb).

16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, plaintiffs pray for judgment against defendants as follows:

- 18 1. ON THE FIRST CLAIM FOR RELIEF AGAINST ALL DEFENDANTS:
 - 19 a. For an order of replevin directing to plaintiffs the return of all converted
 - 20 personal property to the rightful owners;
 - 21 b. For an order directing the transfer to plaintiff the registration for RL.Com
 - 22 from John Laxton, or any other registrant thereof to whom the same
 - 23 may have been conveyed;
 - 24 c. For an order directing the transfer to Dale Mayberry the registration for
 - 25 MAT.Net from John Laxton, or any other registrant thereof to whom the
 - 26 same may have been conveyed;
 - 27 d. For actual damages for lost use of the domains according to proof;
 - 28

- 1 e. For plaintiffs' reasonable attorneys fees incurred in prosecution of this
- 2 action;
- 3 2. ON THE SECOND CLAIM FOR RELIEF AGAINST ALL DEFENDANTS,
- 4 a. For damages for lost use of the domains and lost business
- 5 opportunities, according to proof;
- 6 b. For plaintiffs' reasonable attorneys fees incurred in the prosecution of
- 7 this action;
- 8 3. ON THE THIRD CLAIM FOR RELIEF AGAINST ALL DEFENDANTS,
- 9 a. For an order declaring the conduct of defendants, and each of them,
- 10 unfair business practices, and declaring all assets and commercial
- 11 advantages gained thereby to be the fruit of unlawful acts, subject to
- 12 disgorgement;
- 13 b. For an order directing the transfer to plaintiff the registration for RL.Com
- 14 from John Laxton, or any other registrant thereof to whom the same
- 15 may have been conveyed;
- 16 c. For an order directing the transfer to Dale Mayberry the registration for
- 17 MAT.Net from John Laxton, or any other registrant thereof to whom the
- 18 same may have been conveyed;
- 19 d. Finding that defendants have engaged in unfair competition and false
- 20 advertising;
- 21 e. Enjoining defendants, their respective agents, directors, employees,
- 22 successors and assigns, and all persons acting in concert with
- 23 defendants, during the pendency of this action and permanently, from
- 24 directly or indirectly engaging in any further such wrongful acts;
- 25 f. Directing defendants to account for all gains, profits and advantages
- 26 derived from acts resulting in their unjust enrichment at plaintiffs'
- 27 expense;
- 28

KRONENBERGER BURGOYNE, LLP
 150 Post Street, Suite 520
 San Francisco, CA 94108
 www.KronenbergLaw.com

- g. Directing defendants to disgorge all gains, profits and advantages derived from acts resulting their unjust enrichment at plaintiffs' expense;
- h. Directing all gains, profits and advantages derived by defendants from violations of law resulting in their unjust enrichment to be held in constructive trust for the benefit of plaintiffs;

4. ON THE FOURTH CLAIM FOR RELIEF AGAINST ALL DEFENDANTS, for a declaration that plaintiffs have the following rights, and that defendants' contrary claims are dismissed:

- a. The right to control the identity of the Registrant, Administrative Contact and Technical Contact for the RL.COM and MAT.Net domains in the worldwide Whois database;
- b. The right to reverse the effect of fraudulent transfers effected by identity theft and the use of forged documents of transfer;
- c. The right to obtain return of property wrongfully held, to wit, the RL.Com and MAT.Net domains; and
- d. The right to recover all funds wrongfully obtained by the defendants by the usurpation of plaintiffs' rights alleged as above in subparagraphs "a-c."

5. ON THE FIFTH CLAIM FOR RELIEF AGAINST RL.Com and MAT.Net, for an order correcting the registration of of the RL.Com and MAT.Net domains and directing their disposition in accordance with the ownership claims of plaintiffs.

6. ON ALL CLAIMS FOR RELIEF, for orders

- a. Entering Judgment against defendants for plaintiffs' costs, attorneys' fees and,
- b. For such other and further relief as the Court deems to be just and equitable.

1 Respectfully Submitted,

2

3 DATED: November 14, 2006.

4

KRONENBERGER BURGOYNE, LLP

5

6

By:



7

Karl S. Kronenberger
Attorneys for Plaintiff
CRS Recovery

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

KRONENBERGER BURGOYNE, LLP
150 Post Street, Suite 520
San Francisco, CA 94108
www.KronenbergerLaw.com

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury on all claims properly presentable to a jury for determination.

Respectfully Submitted,

DATED: November 14, 2006.

KRONENBERGER BURGOYNE, LLP

By: 

Karl S. Kronenberger
Attorneys for Plaintiff
CRS Recovery

KRONENBERGER BURGOYNE, LLP
150 Post Street, Suite 520
San Francisco, CA 94108
www.KronenbergerLaw.com